

An aerial photograph of a terraced vineyard on a hillside. The rows of grapevines are arranged in a grid-like pattern across the slope, with some areas appearing darker, possibly due to shadows or the age of the vines. The overall scene is lush and green, suggesting a healthy vineyard.

AOPs/GIs: An Introduction with a Focus on the Wine Industry

Richard Mendelson

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Washington, DC

rpmendelson@gmail.com

What is a GI?



World Trade Organization (WTO) Trade-Related Aspects of Intellectual Property (TRIPs) definition:

Geographical indications are indications which identify a good as originating in the territory of a country, a region or a locality, where a given **quality, reputation or other characteristic of the good** is essentially attributable to its geographical origin.

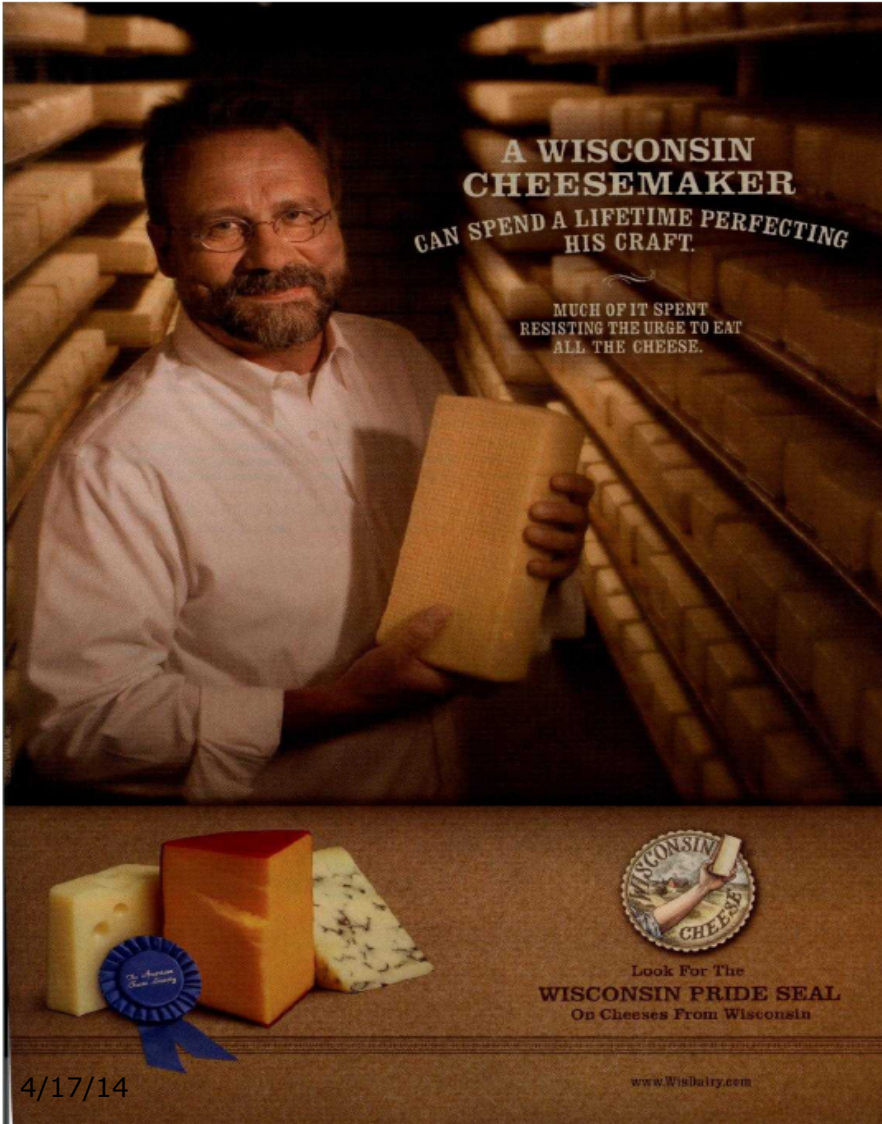
TRIPs Articles 22 & 23

- ❑ WTO Members shall provide the legal means for interested parties to prevent:
 - The use of any means in the presentation of product, including the registration of a mark containing a GI, that would **mislead** the public as to geographic origin.
 - The use or registration of marks for wines or spirits which contain geographical indications when the wine or spirit **does not originate from the geographic area identified** by the geographical indication.

GI Modes of Registration/Protection

- 1) Certification or Collective Mark (TM system) Registration (U.S., Norway, Switzerland)
- 2) Independent (sui generis) System for Registration (EU, India)
- 3) False/Misleading Advertising Laws (Japan, New Zealand, Chile)

Protecting Geographical Indications



A WISCONSIN
CHEESEMAKER
CAN SPEND A LIFETIME PERFECTING
HIS CRAFT.

MUCH OF IT SPENT
RESISTING THE URGE TO EAT
ALL THE CHEESE.

Look For The
WISCONSIN PRIDE SEAL
On Cheeses From Wisconsin

www.WisDairy.com

4/17/14

CERTIFICATION MARK
PRINCIPAL REGISTER



PRIDE.
OUR SECRET INGREDIENT.

Protecting Geographical Indications

- WISCONSIN CHEESE and Design certification mark certifies that the cheese is 100% cow's milk natural cheese produced in the state of Wisconsin or processed cheese made exclusively with cow's milk natural cheese produced in the state of Wisconsin.
- Owned by Wisconsin Milk Marketing Board

Standard Intellectual Property (IP)

- *Trademark*: a word, device, sign or symbol used in commerce to designate the source (proprietor) of a good or service
- *Copyright*: the expression of an original idea (not the idea itself), including dramatic, musical and artistic works
- *Patent*: a process, design, machine or improvement thereof that is useful, novel and non-obvious
- *Trade secret*: an invention or idea which the owner/creator wishes to monopolize and not release into the public domain

Classic IP Treatise

J. Thomas McCarthy,
McCarthy on Trademarks and Unfair Competition

7 volumes, thousands of pages
10 pages devoted to GIs



Is the geographic term ...

- ❑ Descriptive, constituting “fair use”?
- ❑ Fanciful (arbitrary) and not misleading or deceptive?
- ❑ Generic for a certain type of product not necessarily from the place indicated?
- ❑ Protectable as intellectual property, constituting a geographical indication (GI)?

Lisbon Agreement for the Protection of Appellations of Origin and their Intellectual Registration (1958)

Product	Registrations		Top Holder	
	Number	%age	Country	%age
Wines	470	61	France	81
Spirits	73	10	France	82
Agricultural Products	51	7	---	
Cheeses	50	7	France	74
Ornamental Products	33	4	Czech Republic	65
Tobacco & Cigarettes	33	4	Cuba*	100
Miscellaneous	25	3	---	
Mineral Water	17	2	Czech Republic	82
Beer and Malt	14	2	Czech Republic	93

Note: All percentages are rounded off.

***Only cigarettes**

Source: Assembled from data in Escudero (2001)

The Socio-Economics of Geographical Indications

A Review of Empirical Evidence from Europe

by Dwijen Rangnekar

Issue Paper No. 8, May 2004 – Intellectual Property Rights & Sustainable Development

Key GI Concepts

- ❑ *Science*: “*terroir*,” not translated as soil but rather as the composite of physical factors that influence agricultural production, along with associated human factors.
- ❑ *Economics*: rural development, product differentiation, quality, competition, innovation, administrative costs, search costs
- ❑ *Sociocultural factors*: link to traditional knowledge

Why should we care about GIs?

- ▣ *Producer perspective*: product differentiation, quality orientation, marketing and promotion, investment in R+D

... stifle innovation? restrict competition?
increase administrative costs to develop,
administer and enforce the criteria?

Why should we care about GIs?

- ▣ *Consumer perspective*: authenticity, uniqueness, reliability

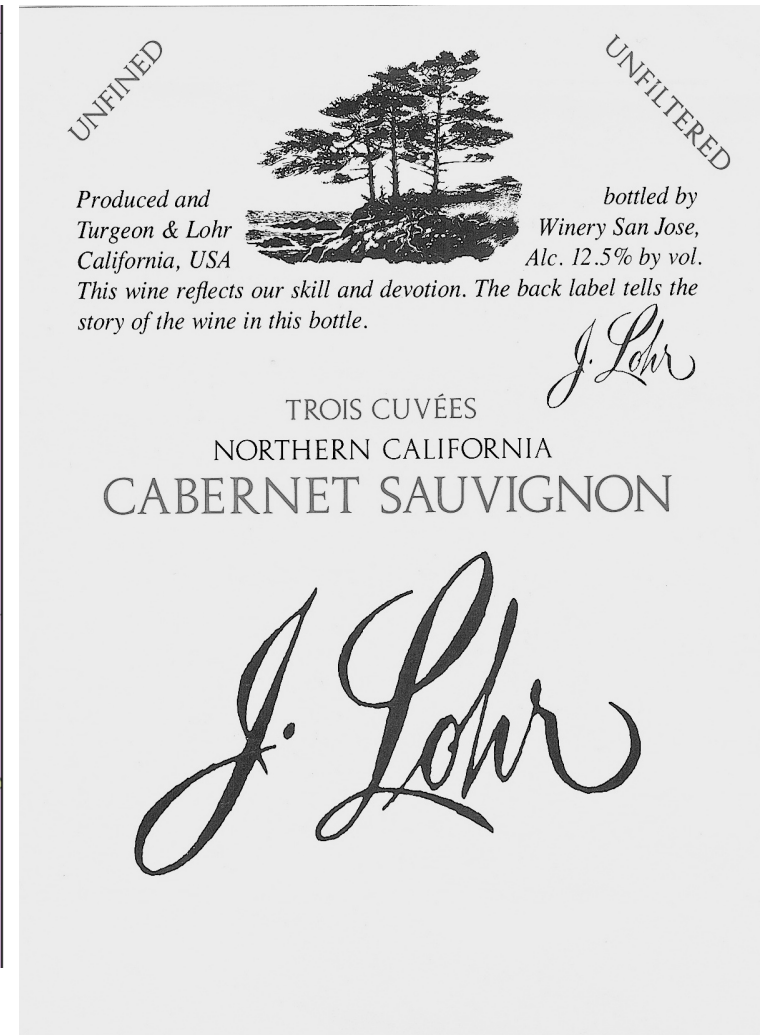
... increase product cost and search costs without corresponding benefit?

Why should we care about GIs?

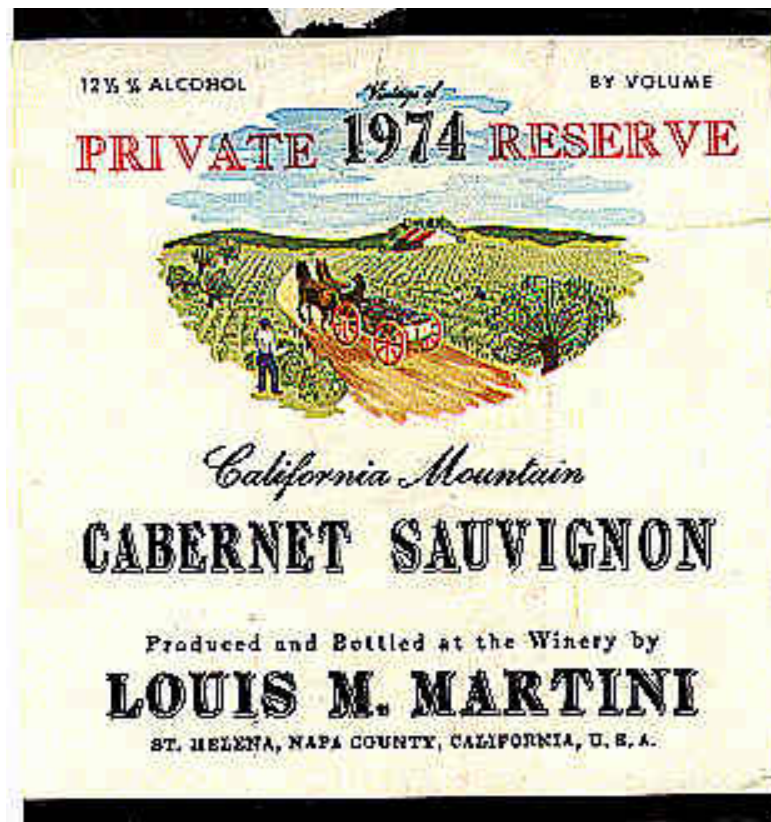
▣ *Governmental (policy) perspective:*

- economic development (rural, small business);
- human development (build community values, empower women);
- historical and cultural preservation (traditional knowledge);
- ensure food safety;
- promote international trade

Wine Appellations – The Concept of Provenance






Provenance – Where is California Mountain?



Dep't of Treasury Tax & Trade Bureau (TTB)

Certification
of Label/Bottle
Approval (COLA)
is required before
any wine can be
sold.

OMB No. 1512-0092 (11/30/2005)

DEPARTMENT OF THE TREASURY ALCOHOL AND TOBACCO TAX AND TRADE BUREAU APPLICATION FOR AND CERTIFICATION/EXEMPTION OF LABEL/BOTTLE APPROVAL <small>(See instructions and Paperwork Reduction Act Notice on Back)</small>	
TTB ID: 05361-000-000080	
1. REP. ID. NO. (If any) <u>1001</u> CT <u>80</u> OR <u>01</u>	
2. PLANT REGISTRY/BASIC PERMIT/BREWER'S NO. (Required) BW-CA-5917/ CA-W-15209	
3. SERIAL NUMBER (Required) 0 5 -- 2 2	
4. TYPE OF PRODUCT (Required) <input checked="" type="checkbox"/> WINE <input type="checkbox"/> DISTILLED SPIRITS <input type="checkbox"/> MALT BEVERAGE	
5. BRAND NAME (Required) Mendelson	
6. FANCIFUL NAME (If any) Reserve Lot One	
8. EMAIL ADDRESS linda@compliance-connect.com	
9. FORMULA/SOP NO. (If any)	
10. LAB. NO. & DATE/PRE-IMPORT NO. & DATE (If any)	
17. TYPE OF APPLICATION (Check applicable box(es)) a. <input checked="" type="checkbox"/> CERTIFICATE OF LABEL APPROVAL b. <input type="checkbox"/> CERTIFICATE OF EXEMPTION FROM LABEL APPROVAL "For sale in _____ only" (Fill in State abbreviation) c. <input type="checkbox"/> DISTINCTIVE LIQUOR BOTTLE APPROVAL. TOTAL BOTTLE CAPACITY BEFORE CLOSURE (Fill in amount) d. <input type="checkbox"/> RESUBMISSION AFTER REJECTION TTB ID: _____	
7. NAME AND ADDRESS OF APPLICANT AS SHOWN ON PLANT REGISTRY, BASIC PERMIT OR BREWER'S NOTICE. INCLUDE APPROVED DBA OR TRADENAME IF USED ON THE LABEL. (Required) Regusci Winery, Inc. dba: Mendelson 5584 Silverado Trail Napa, CA 94558	
7a. MAILING ADDRESS, IF DIFFERENT Same	
11. NET CONTENTS 375ml	
12. ALCOHOL CONTENT 13.0%	
13. WINE APPELLATION (if on label) Mendocino County	
14. WINE VINTAGE DATE (if on label)	
15. PHONE NUMBER (707) 254-0299	
16. FAX NUMBER (707) 254-0417	
18. SHOW ANY WORDING (a) APPEARING ON MATERIALS FIRMLY AFFIXED TO THE CONTAINER (e.g., caps, cellophane, corks, etc.) OTHER THAN THE LABELS AFFIXED BELOW, OR (b) BLOWN, BRANDED OR EMBOSSED ON THE CONTAINER (e.g., net contents, etc.). THIS WORDING MUST BE NOTED HERE EVEN IF IT DUPLICATES PORTIONS OF THE LABELS AFFIXED BELOW. ALSO, PROVIDE TRANSLATIONS OF FOREIGN LANGUAGE TEXT APPEARING ON LABELS. Net contents blown into bottle. Cork states: "Mendelson".	
PART II - APPLICANT'S CERTIFICATION Under the penalties of perjury, I declare: that all statements appearing on this application are true and correct to the best of my knowledge and belief; and, that the representations on the labels attached to this form, including supplemental documents, truly and correctly represent the content of the containers to which these labels will be applied. I also certify that I have read, understood and complied with the conditions and instructions which are attached to an original TTB F 5100.31, Certificate/Exemption of Label/Bottle Approval.	
19. DATE OF APPLICATION 12/16/05	
20. SIGNATURE OF APPLICANT OR AUTHORIZED AGENT <i>Linda Fox</i>	
21. PRINT NAME OF APPLICANT OR AUTHORIZED AGENT Linda Fox Attorney-In-Fact	
PART III - TTB CERTIFICATE This certificate is issued subject to applicable laws, regulations and conditions as set forth in the instructions portion of this form.	
22. DATE ISSUED JAN 11 2006	
23. AUTHORIZED SIGNATURE, ALCOHOL AND TOBACCO TAX AND TRADE BUREAU <i>Nicole E. Buckhardt</i>	
FOR TTB USE ONLY	
QUALIFICATIONS	
EXPIRATION DATE (If any)	
AFFIX COMPLETE SET OF LABELS	
 	
PRODUCED & BOTTLED BY MENDELSON, NAPA, CA GOVERNMENT WARNING: (1) ACCORDING TO THE SURGEON GENERAL, WOMEN SHOULD NOT DRINK ALCOHOLIC BEVERAGES DURING PREGNANCY BECAUSE OF THE RISK OF BIRTH DEFECTS. (2) CONSUMPTION OF ALCOHOLIC BEVERAGES IMPAIRS YOUR ABILITY TO DRIVE A CAR OR OPERATE MACHINERY, AND MAY CAUSE HEALTHY PROBLEMS. CONTAINS SULFITES • 375 ML RESIDUAL SUGAR 16% BY WEIGHT	
RESERVE LOT ONE  Muscat Canelli Mendocino County	
We are pleased to offer our first reserve Muscat Canelli wine, blended across various vintages that have been barrel-aged in our cellars. The wine has a captivating complexity of flavor on the nose and palate, with a rich, creamy texture and a long finish. Serve Chilled www.mendelsonwinery.com	

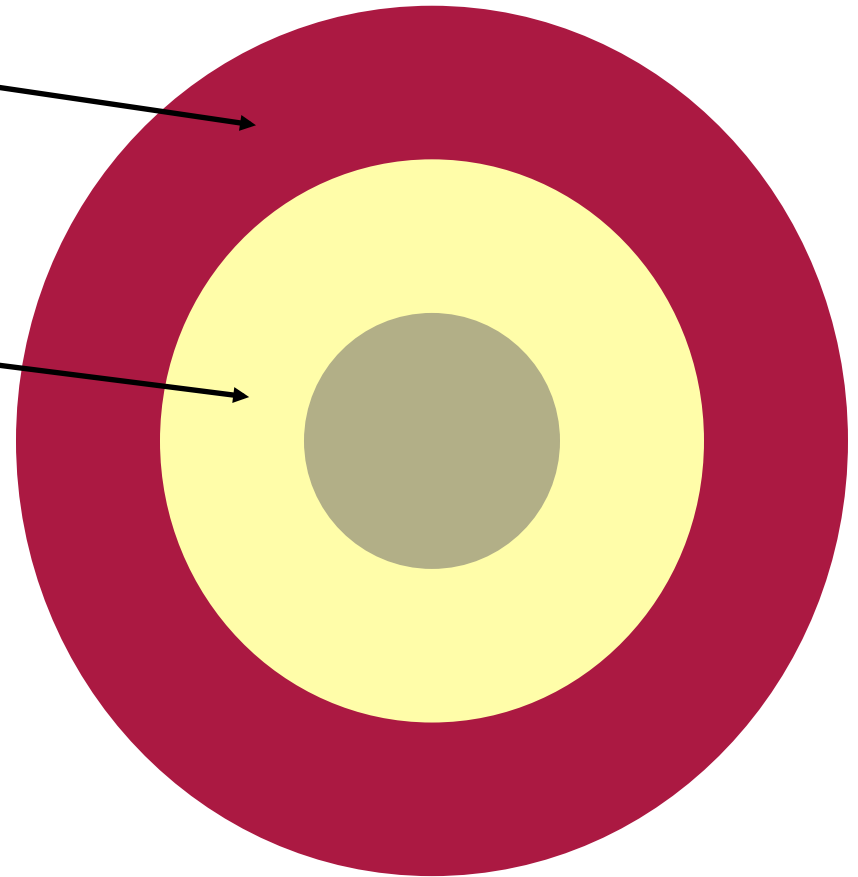
TTB F 5100

The U.S. Appellation System

- **Political Appellation**
(US, state, county)
 - 75% grape source rule

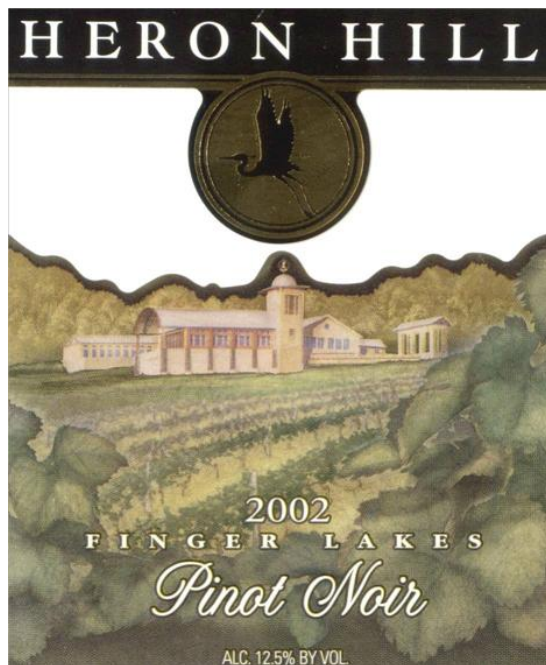
- **American viticultural area (AVA)**
 - 85% grape source rule
 - 95% with vineyard designation

27 CFR 4.25, 9.1 et seq.



Appellations of Origin

American Viticultural Areas (AVAs) are defined as “delimited grape growing regions distinguishable by geographic features, the boundaries of which have been recognized and defined by TTB.” **27 CFR 4.25a(e)(1)**



AVA Petitions

27 CFR 9.12

Code of Federal Regulations

Title 27 - Alcohol, Tobacco Products and Firearms

§ 9.12

AVA petition requirements.

(a) **Establishment of an AVA in general.** A petition for the establishment of a new AVA must include all of the evidentiary materials and other information specified in this section. The petition must contain sufficient information, data, and evidence such that no independent verification or research is required by TTB.

(1) **Name evidence.** The name identified for the proposed AVA must be currently and directly associated with an area in which viticulture exists. All of the area within the proposed AVA boundary must be nationally or locally known by the name specified in the petition, although the use of that name may extend beyond the proposed AVA boundary. The name evidence must conform to the following rules:

(i) **Name usage.** The petition must completely explain, in narrative form, the manner in which the name is used for the area covered by the proposed AVA.

(ii) **Source of name and name evidence.** The name and the evidence in support of it must come from sources independent of the petitioner. Appropriate name evidence sources include, but are not limited to, historical and modern government or commercial maps, books, newspapers, magazines, tourist and other promotional materials, local business or school names, and road names. Whenever practicable, the petitioner must include with the petition copies of the name evidence materials, appropriately cross-referenced in the petition narrative. Although anecdotal information by itself is not sufficient, statements taken from local residents with knowledge of the name and its use may also be included to support other name evidence.

(2) **Boundary evidence.** The petition must explain in detail the basis for defining the boundary of the proposed AVA as set forth in the petition. This explanation must have reference to the name evidence and other distinguishing features information required under this section. In support of the proposed boundary, the petition must outline the commonalities or similarities within that boundary and must explain with specificity how those elements are different in the adjacent areas outside that boundary.

(3) **Distinguishing features.** The petition must provide, in narrative form, a description of the common or similar features of the proposed AVA affecting viticulture that make it distinctive. The petition must also explain with specificity in what way these features affect viticulture and how they are distinguished viticulturally from features associated with adjacent areas outside the proposed AVA boundary. For purposes of this section, information relating to distinguishing features affecting viticulture includes the following:

(i) **Climate.** Temperature, precipitation, wind, fog, solar orientation and radiation, and other climate information;

(ii) **Geology.** Underlying formations, landforms, and such geophysical events as earthquakes, eruptions, and major floods;

(iii) **Soils.** Soil series or phases of a soil series, denoting parent material, texture, slope, permeability, soil reaction, drainage, and fertility;

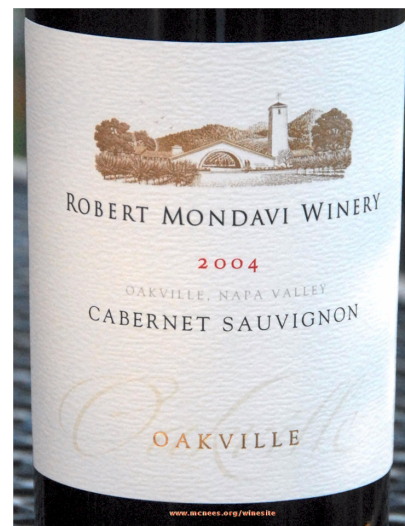
(iv) **Physical features.** Flat, hilly, or mountainous topography, geographical formations, bodies of water, watersheds, irrigation resources, and other physical features; and

(v) **Elevation.** Minimum and maximum elevations.

(4) **Maps and boundary description.** —(i) **Maps.** The petitioner must submit with the petition, in an appropriate

Appellations and Wine Pricing

A study conducted by the UC Agricultural Issues Center found that a bottle of "Napa Valley" wine costs \$19.80 more on average than a wine carrying a "California" appellation. "Oakville," at \$45 per bottle, and "Howell Mountain" at \$43.60 per bottle, are the appellations with the highest average prices.



TRIPS Exceptions

GIs vs. TMs

Art. 24(5). Where a trademark has been applied for or registered in good faith, or where rights to a trademark have been acquired through use in good faith either before (January 1, 1996) or before the geographical indication is protected in its country of origin, measures adopted to implement this Section shall not prejudice eligibility for or the validity of the registration of a trademark, or the right to use a trademark, on the basis that such a trademark is identical with, or similar to, a geographical indication.

Genericide

Art. 24(6). Nothing in this Section shall require a Member to apply its provisions in respect of a geographical indication of any other Member with respect to goods or services for which the relevant indication is identical with the term customary in common language as the common name for such goods or services in the territory of that Member.

Geographic Brand Names

SANTA CRUZ MOUNTAIN VINEYARD



SANTA CRUZ MOUNTAINS
CHARDONNAY

1986 VINTAGE

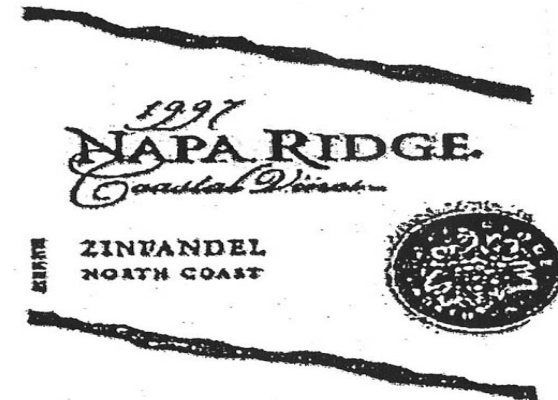
ESTATE VYD.



The wine must meet the appellation requirements for the geographic area named.

27 CFR 4.39 (i) (1)

Laying Claim to Napa: The Bronco Case



Grandfather Rule, Pre-1986:

The wine can bear a misdescriptive "name of viticultural significance" if the label includes an appropriate appellation of origin.

27 CFR 4.39 (i) (2)

California Business and Professions Code

Section 25241, 2000

Recitals

The Legislature finds, however, that certain producers are using Napa appellations on labels, on packaging materials, and in advertising for wines that are not made from grapes grown in Napa County, and that consumers are confused and deceived by these practices.

The Legislature further finds that legislation is necessary to eliminate these misleading practices.

California Business & Professions Code

Section 25241, continued

No wine produced, bottled, labeled, offered for sale or sold in California shall use, **in a brand name or otherwise**, on any label, packaging material, or advertising, any of the following names ... unless that wine qualifies ... for the appellation of origin Napa County:

- (1) Napa;
- (2) Any AVA located wholly within Napa County;
- (3) Any similar name to those above that is likely to cause confusion as to the origin of the wine.

There are exceptions for mandatory name and address statements and factual, non-misleading statements as to the history or location of the winery.

The Bronco Case

Legal Challenges:

- Supremacy Clause – implied federal preemption
- Commerce Clause – interference with interstate commerce
- First Amendment – commercial free speech
- Takings Clause – taking without compensation

The Bronco Case Cal. Supreme Court Decision, 33 Cal.4th 943 (2004)

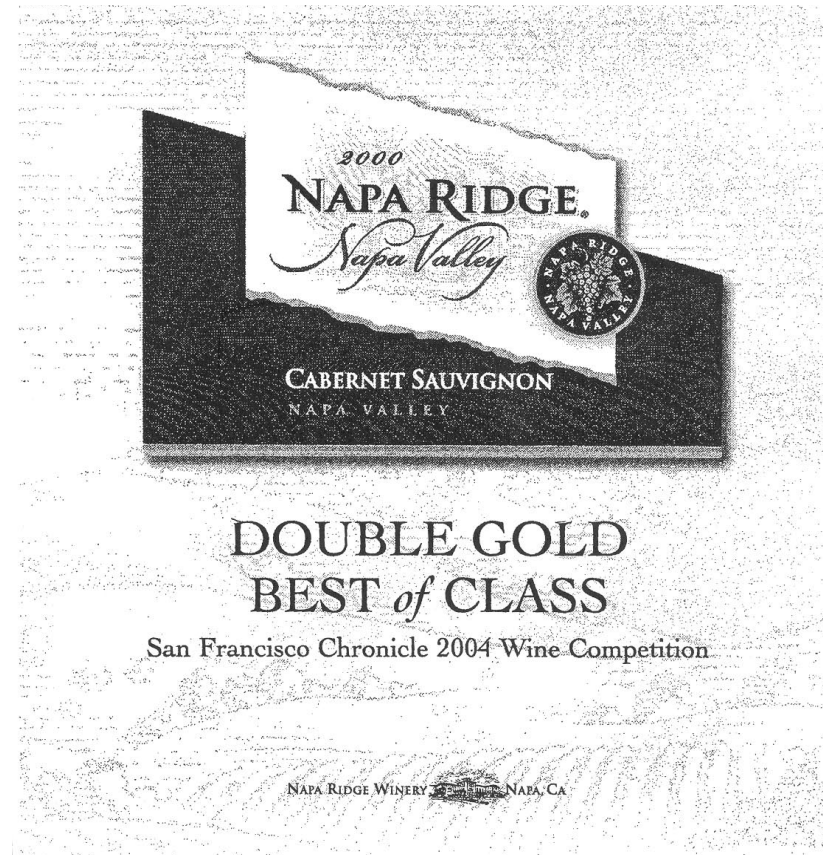
Conclusion

“California is recognized as a preeminent producer of wine, and the geographic source of its wines - reflecting **the attributes of distinctive locales, particularly the Napa Valley - forms a very significant basis upon which consumers worldwide evaluate expected quality when making a purchase.** We do not find it surprising that Congress, in its effort to provide minimum standards for wine labels, would not foreclose a state with particular expertise and interest from providing **stricter protection for consumers in order to ensure the integrity of its wine industry.**”

For the reasons set forth above, we reverse the judgment of the Court of Appeal and remand the case to that court to enable it to address Bronco’s remaining claims.”

WIN – WIN

(Cal. Bus. & Prof. Code § 25241)



Semi-Generics: 27 CFR 4.24

Semi-generic designations may be **used to designate wines of an origin other than that indicated by such name only if there appears in direct conjunction** therewith an appropriate **appellation of origin disclosing the true place of origin** of the wine, **and if the wine so designated conforms to the standard of identity, if any,** for such wine contained in the regulations in this part **or, if there be no such standard, to the trade understanding of such class or type.**

Examples of semi-generic names which are also type designations for grape wines are **Angelica, Burgundy, Claret, Chablis, Champagne, Chianti, Malaga, Marsala, Madeira, Moselle, Port, Rhine Wine (syn. Hock), Sauterne, Haut Sauterne, Sherry, Tokay.**



E.U.-U.S. Wine Accord, Phase 2

March 10, 2006

- No new uses allowed for “semi-generic” terms in the United States, including Retsina (Greece) but excluding Angelica (U.S.).
- Grandfather date: March 10, 2006.
 - Any person or his or her successor may continue to use a semi-generic name (or Retsina) on a label of a wine not originating from the named place if the wine bears the same brand name, or the same brand name and fanciful name that appeared on a COLA that was issued prior to March 10, 2006.

“Semi-Generics”



- ❑ May change vintage
 - ❑ May change appellation
 - ❑ May redesign label
- ❑ May not change brand name
- Name variations also will be rejected, e.g., Chablisien

Protecting Napa Valley GI Abroad

□ Register Napa Valley GI in Each Export Market

- EU
- China
- Thailand
- India
- Canada
- New Zealand
- Australia
- Brazil

□ Prevent Genericide Everywhere

□ Promote a Multilateral Register



Thank you

Richard Mendelson

rpmendelson@gmail.com